

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claims 1, 2 and 5-14 are pending. Claims 1, 2 and 5-14 have been rejected.

Claims 1, 6, and 9 have been amended. No claims have been canceled. No claims have been added. Support for the amendments is found in the specification, the drawings, and in the claims as originally filed. Applicants submit that the amendments do not add new matter.

Applicants reserve the rights with respect to the applicability of the Doctrine of Equivalents.

Claim 9 has been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,532,214 to Rumsewicz (“Rumsewicz”). Applicants reserve the right to swear behind Rumsewicz.

Applicants has amended claim 9 to include a control point, wherein the control point is located nearby or in the control node, wherein the control point is to determine at least one resonance point that exhibits improved network performance metrics.

Rumsewicz discloses controlling traffic congestion or overload in a network that includes a service control point. More specifically, Rumsewicz discloses maintaining the throughput through the service control point at targeted levels (col. 1, lines 49-53). In particular, Rumsewicz discloses monitoring the moving average of the traffic profile passing through the node, detecting when congestion occurs at the node, and determining from the moving average of the traffic profile whether the congestion is caused by a sudden change in the traffic profile (col. 1, lines 54-67).

Thus, Rumsewicz merely discloses detecting congestion in the traffic profile. In contrast, amended claim 9 refers to the control point that is to determine at least one resonance point that exhibits improved network performance metrics.

Because Rumsewicz fails to disclose all limitations of amended claim 9, applicants respectfully submit that amended claim 9 is not anticipated under 35 U.S.C. § 102(e) by Rumsewicz.

Given that claims 10-14 depend from amended claim 9, and add additional limitations, applicants respectfully submit that claims 10-14 are not anticipated under 35 U.S.C. § 102(e) by Rumsewicz.

Claims 1-2, 5-8 and 10-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Rumsewicz, in view of U.S. Publication No. 2002/0169880 to Loguinov, et al. (“Loguinov”). Applicants reserve the right to swear behind Rumsewicz and Loguinov.

Applicants have amended claim 1 to include operating a control node of a communication network at a packet bandwidth wherein the control node is located in a communication link between at least one server and at least one client and wherein the control node comprises at least one control point wherein at least one resonance point that exhibits improved network performance metrics is determined at the control point by scanning across a range of bandwidths until one or more of the network performance metrics is/are optimized, and wherein said packet bandwidth corresponds to a resonance point from the at least one resonance point.

It is respectfully submitted that Rumsewicz does not teach or suggest a combination with Loguinov, and Loguinov does not teach or suggest a combination with Rumsewicz. It would be impermissible hindsight, based on applicants’ own disclosure, to combine Rumsewicz and Loguinov.

Rumsewicz, as set forth above, teaches determining traffic congestion, and fails to disclose determining at least one resonance point that exhibits improved network performance metrics at the control point by scanning across a range of bandwidths until one or more of the network performance metrics is/are optimized, as recited in amended claim 1.

Loguinov, in contrast, discloses estimating a bottleneck bandwidth (Abstract) and similarly to Rumsewicz, fails to disclose determining at least one resonance point that exhibits improved network performance metrics at the control point by scanning across a range of bandwidths until one or more of the network performance metrics is/are optimized, as recited in amended claim 1.

Thus, neither Rumsewicz, Loguinov, nor a combination thereof, discloses determining at least one resonance point that exhibits improved network performance metrics at the control point by scanning across a range of bandwidths until one or more of the network performance metrics is/are optimized, as recited in amended claim 1.

Therefore, applicants respectfully submit that amended claim 1 is not obvious under 35 U.S.C. § 103(a) over Rumsewicz, in view of Loguinov.

Because amended claim 6 contains discussed limitations, applicants respectfully submit that amended claim 6 is not obvious under 35 U.S.C. § 103(a) over Rumsewicz, in view of Loguinov.

Given that claims 2, 5, and 7-8 depend from amended claims 1 and 6 respectively, and add additional limitations, applicants respectfully submit that claims 2, 5, and 7-8 are not obvious under 35 U.S.C. § 103(a) over Rumsewicz, in view of Loguinov.

It is respectfully submitted that in view of the amendments and arguments set forth herein, the applicable rejections and objections have been overcome.

If there are any additional charges, please charge Deposit Account No. 02-2666.

Respectfully submitted,

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